

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In re the Marriage of:

No. 27328-8-III

HEIDI LYNN (CUEVA) PFEIFFER,

Respondent,

and

GUSTAVO ALEJANDRO CUEVA,

Appellant.

Division Three

UNPUBLISHED OPINION

Sweeney, J. — A parent may relocate a child following a dissolution decree unless that relocation has a more detrimental than beneficial effect on the child and the relocating parent. There is a long list of legislatively mandated factors the court must consider before exercising its discretion to allow the move or prohibit it. Here, the court considered the appropriate factors and then allowed the mother to move the child. We, therefore, affirm the court’s decision and its amended parenting plan and child support order.

FACTS

Gustavo Cueva and Heidi Pfeiffer divorced in 2005. There is one child of that marriage, a daughter Tatiana Cueva. Ms. Pfeiffer and Mr. Cueva have shared custody of Tatiana since their divorce. Tatiana resided with Ms. Pfeiffer in Buckley, Washington, during the week and stayed with Mr. Cueva in Tacoma, Washington, every weekend.

In 2008, Ms. Pfeiffer notified Mr. Cueva and the court that she intended to relocate Tatiana to Silverton, Oregon. Mr. Cueva opposed the relocation. The trial court heard the parties' oral arguments, reviewed memoranda, declarations, and a deposition, considered the appropriate statutorily mandated factors, entered a finding of fact for each and, ultimately, concluded that relocating Tatiana to Silverton was not more detrimental than beneficial to her and Ms. Pfeiffer. It then granted Ms. Pfeiffer's petition to relocate and modified the parties' parenting plan and child support order accordingly.

DISCUSSION

Mr. Cueva appeals the trial court's grant of Ms. Pfeiffer's petition to relocate Tatiana. We review that decision for abuse of discretion. *In re Marriage of Horner*, 151 Wn.2d 884, 893, 93 P.3d 124 (2004); *Bay v. Jensen*, 147 Wn. App. 641, 651, 196 P.3d 753 (2008). A court abuses its discretion where the court applies an incorrect legal standard, the record does not support the court's findings, or the facts do not meet the requirements of the correct standard. *Horner*, 151 Wn.2d at 894 (quoting *In re Marriage of Littlefield*, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997)).

Improper Legal Standard

RCW 26.09.520 (hereinafter, “the relocation statute”) provides the legal standard for determining a relocation issue. *Horner*, 151 Wn.2d at 895. The trial court must consider the 11 factors listed in the relocation statute on the record to determine whether the detrimental effect of the proposed relocation outweighs its benefits. *Id.* at 894-95.

Mr. Cueva asserts that the trial court here did not consider these 11 factors when it resolved the relocation issue before it. He argues that the court, instead, might have applied the legal standard required in RCW 26.09.260¹ for modifying a parenting plan. The court’s written findings of fact here suggest otherwise. They list the 11 relocation statute factors verbatim and include findings under each factor. Clerk’s Papers (CP) at 368-70. The court’s findings do not mention RCW 26.09.260 standards. The court applied the correct legal standard to the relocation issue.

Unsupported/Deficient Findings

Mr. Cueva next contends that the trial court abused its discretion because either the court’s findings do not satisfy the statutory requirements or the record does not support the court’s findings. His essential argument appears to be that Ms. Pfeiffer did

¹ RCW 26.09.260(1) permits modification of a parenting plan or custody decree where the court finds that “a substantial change has occurred in the circumstances of the child or the nonmoving party and that the modification is in the best interest of the child and is necessary to serve the best interests of the child.”

not show that the move to Silverton would be beneficial. And he says he showed that the move would be detrimental but the court ignored him.

We first note that the relocation statute presumes that a proposed relocation will benefit the child and, therefore, will be granted. *Horner*, 151 Wn.2d at 895 (quoting *In re Custody of Osborne*, 119 Wn. App. 133, 144-45, 79 P.3d 465 (2003)). The parent proposing relocation, accordingly, need offer only her reasons for relocating. RCW 26.09.520. To rebut the presumption that relocation is beneficial, the parent opposing relocation must show that the intended move has a more detrimental than beneficial effect on the child and the relocating parent. *Id.*

The trial court's decision to permit the move is necessarily subjective. *In re Marriage of Grigsby*, 112 Wn. App. 1, 14, 57 P.3d 1166 (2002). Our task on review is limited to determining whether the court's findings are supported by the record and whether they, in turn, reflect consideration of the appropriate factors. *Horner*, 151 Wn.2d at 896. Our task is not to reweigh the evidence. *In re Marriage of Kovacs*, 121 Wn.2d 795, 810, 854 P.2d 629 (1993); *In re Marriage of Pennamen*, 135 Wn. App. 790, 802-03, 146 P.3d 466 (2006).

The court should enter specific findings for each factor listed in the relocation statute. *Horner*, 151 Wn.2d at 895. But even if it does not, we will affirm the decision so long as the record supports each factor and the court's findings or comments on the

record show that the court considered each factor in reaching its decision. *Id.* at 896.

The trial court here entered findings of fact for each of the 11 factors listed in the relocation statute. Mr. Cueva assigns error to all 11 findings but offers argument on only 7 of them. We consider below the 7 challenged findings supported by argument. We will not review assignments of error not supported by legal argument. *Herring v. Dep't of Soc. & Health Servs.*, 81 Wn. App. 1, 13, 914 P.2d 67 (1996).

Finding re: Factor 1—Child's Relationship with Parents and Others

The first relocation factor requires the court to consider “[t]he relative strength, nature, quality, extent of involvement, and stability of the child’s relationship with each parent, siblings, and other significant persons in the child’s life.” RCW 26.09.520(1). Here, the court found that “[b]oth parents are good parents.” CP at 368.

Mr. Cueva argues that it is unclear what evidence supports this finding. It is not unclear to us. The record here shows that Mr. Cueva and Ms. Pfeiffer both have a positive relationship with Tatiana and adequately provide for her needs.

Mr. Cueva also appears to argue that case law requires that the trial court’s finding address Tatiana’s relationships with her parents and other relatives and the potential loss of family ties. *See* Appellant’s Br. at 19-20 (citing *In re Marriage of Momb*, 132 Wn. App. 70, 74, 130 P.3d 406 (2006), and *Pennamen*, 135 Wn. App. at 806).

Indeed, *Horner* requires that the trial judge consider Tatiana’s relationship with

family because it requires that the court consider *all* relocation statute factors. 151 Wn.2d at 895. And the language of the relocation statute's first factor requires that the court consider a child's relationships with his or her parents, siblings, and other significant people. RCW 26.09.520(1). It does not require that the court consider the possible loss of these family ties. *See id.*

The court's finding here does not specifically address Tatiana's relationships with Mr. Cueva, Ms. Pfeiffer, or other significant people in her life. But the court's oral musings show that it considered Tatiana's relationship with her parents. And evidence shows that Tatiana regularly sees and has stable, positive relationships with her parents, grandparents, aunts, uncles, and other family friends.

We conclude, then, that the trial court considered this factor and its finding is easily supported by this record.

Finding re: Factor 3—Disrupting Contact Between Child and Parents

The third relocation factor requires that the court consider "[w]hether disrupting the contact between the child and the person with whom the child resides a majority of the time would be more detrimental to the child than disrupting contact between the child and the person objecting to the relocation." RCW 26.09.520(3). The court found:

There is a disruption of every weekend now since child is with mother during weekdays and with father during weekends. It is not shown that the move is detrimental to the child or that the child will be affected by disrupting contact. There is no allegation that either parent is a bad parent.

CP at 369.

Mr. Cueva appears to assert that *he*, not Ms. Pfeiffer, is Tatiana’s primary residential parent because he spends more “awake time” and “free time” with Tatiana. Yet, the third statutory relocation factor asks the court to consider whether disrupting contact between the child and “the person with whom the child *resides* a majority of the time” would be more detrimental to the child than disrupting contact between the child and the “person objecting to the relocation.” RCW 26.09.520(3) (emphasis added). The parenting plan in effect at the time of the hearing at issue here states that Tatiana “is to reside the majority of the time with the mother.” CP at 6. And the parties agree that, since their divorce, Tatiana *resided* with Ms. Pfeiffer five days a week and stayed with Mr. Cueva on the weekends. Under RCW 26.09.520(3), then, Tatiana *resided* with Ms. Pfeiffer a majority of the time, even though she might have spent more of her awake and free time with Mr. Cueva. Moreover, Mr. Cueva is the person opposing relocation. The third relocation factor, then, required that the court consider whether disrupting Tatiana’s contact with Ms. Pfeiffer would be more detrimental to Tatiana than disrupting Tatiana’s contact with Mr. Cueva. And the record shows the court did so.

Mr. Cueva also argues that a court should not give more weight to a child’s relationship with her residential parent (Ms. Pfeiffer) than her relationship with her non-

residential parent (Mr. Cueva). But Mr. Cueva does not show us how the court's finding does that. On its face, the court's ruling does not favor one parent over the other.

Finding re: Factor 5—Good Faith and Reasons for Seeking and Opposing Relocation

The fifth relocation factor requires that the court consider “[t]he reasons of each person for seeking or opposing the relocation and the good faith of each of the parties in requesting or opposing the relocation.” RCW 26.09.520(5). The court found that Ms. Pfeiffer was seeking relocation in good faith because of a job and that Mr. Cueva was opposing relocation because he wanted control:

This is a control issue on the part of the father. The mother should be able to move for her job. There is no evidence that mother is moving to spite the father. No evidence of bad faith.

CP at 369. Mr. Cueva argues that the record does not support the finding that he has a control issue or that there was no evidence of bad faith.

The record does not explicitly show Mr. Cueva has “a control issue.” It shows that he opposed relocation because he wants to live close to Tatiana. He does not want her to have to travel far to see him. He does not want her to be in child care all day. And he does not want her to be in an unfamiliar place with new people. The court, however, could have inferred from this that Mr. Cueva was trying to control Ms. Pfeiffer's and Tatiana's movements and living arrangements. The record, then, supports the court's finding.

The record also supports the finding that Ms. Pfeiffer sought relocation in good faith. She testified that she wanted to move to Silverton so she could advance her career and co-parent and share living expenses with a roommate. Her testimony provides ample support for the court’s finding that she had valid reasons for moving and was not seeking to relocate in bad faith.

Finding re: Factor 6—Impact of Relocation on Child’s Development

The sixth relocation factor requires the court to consider “[t]he age, developmental stage, and needs of the child, and the likely impact the relocation or its prevention will have on the child’s physical, educational, and emotional development, taking into consideration any special needs of the child.” RCW 26.09.520(6). The court found:

Success in educational opportunities is not dependent on where one lives, but depends on the individual and the ability of the individual.

There is no finding that the mom is trying to take the child from the father.

CP at 369.

Mr. Cueva contends that this finding does not address the impact that moving to Silverton would have on Tatiana’s developmental needs. And perhaps the finding does not specifically address Silverton and how relocation or its prevention would impact Tatiana. Nor does it address Tatiana’s age, needs, or stage of development. We, then, turn to the record to pass on this challenge. *Horner*, 151 Wn.2d at 896.

The court said that neither party produced evidence that Tatiana has special needs. That is a true statement according to the record before us. The court also found that Tatiana's physical, educational, and emotional needs were being met:

From what I understand, the child – nobody . . . says the child is not a stable child or doesn't do well in school. There doesn't seem to be any question that the child is thriving, gets fed adequately and gets a lot of attention from both parents.

Report of Proceedings (RP) (July 1, 2008) at 64. Finally, the court was not convinced that moving to Silverton would negatively impact Tatiana's educational or emotional development. The record shows that she would be enrolled in school in Silverton. It also shows she would continue to have contact with Mr. Cueva and other family members wherever she lived. Thus, even though the court's finding was not specific, the court considered and substantial evidence supports the sixth relocation factor.

Finding re: Factor 7—Quality of Life in Current and Proposed Locations

The seventh relocation factor requires that the court consider "[t]he quality of life, resources, and opportunities available to the child and to the relocating party in the current and proposed geographic locations." RCW 26.09.520(7). Here, the trial court found generally that big cities and small towns offer people good and bad qualities of life, resources, and opportunities:

There is good and bad in both a rural setting and a larger city. There are more drugs and crime in a big city, but it depends on how the individual takes life and uses opportunities. Life in small communities can be more

relaxed and people know each other.

CP at 370. Mr. Cueva argues that this finding does not address the actual activities, resources, and opportunities available to Tatiana in Silverton and the Tacoma area.

Again, we agree with Mr. Cueva. And, again, we turn to the record. *Horner*, 151 Wn.2d at 896.

The record shows that the court considered—and substantial evidence supports—the seventh relocation factor. The court discussed the quality of life, resources, and opportunities available to Tatiana in Silverton and in the Tacoma area. The record shows Tatiana could enjoy a similar quality of life and resources in both locations: she and Ms. Pfeiffer would live in a house and have their own bedrooms in either location; Ms. Pfeiffer would have the same job in either location; and Tatiana would be in child care before and after school in either location. The record also shows that Tatiana would also have similar opportunities to be involved in extra-curricular activities in both locations. The court, then, did not abuse its discretion here even though its finding was not specific.

Finding re: Factor 9—Relocation Alternatives

Under the ninth relocation factor, the court must consider “[t]he alternatives to relocation and whether it is feasible and desirable for the other party to relocate also.”

RCW 26.09.520(9). The court found that both parties had alternatives to relocation and

suggested that, while feasible, Mr. Cueva was unwilling to move:

Alternatives exist for both the mother and father, but the father doesn't want to relocate because his job is in the Tacoma area and the mother wants to relocate to a smaller community and continue working for the same employer she now works for, but in Portland.

CP at 370. Mr. Cueva asserts that neither this finding nor the court's comments address any specific alternatives to relocation. We disagree.

The record shows Mr. Cueva proposed specific relocation alternatives. He proposed that Ms. Pfeiffer move to Vancouver to be closer to her job. He also suggested that he might be willing to move to Olympia so that he could keep his current job and be closer to Vancouver. The court considered those suggestions on the record and rejected them. RP (July 1, 2008) at 11-12, 19-22.

Finding re: Factor 10—Financial Impact of Relocation

Finally, the court must consider “[t]he financial impact and logistics of the relocation or its prevention.” RCW 26.09.520(10). The court found that relocation would not significantly impact the parents’ finances: “There is not a big difference in the financial impact to the parties.” CP at 370.

Mr. Cueva suggests that the record does not support the court’s finding here. He is mistaken. Ms. Pfeiffer would have the same job and salary in both locations. And Ms. Pfeiffer’s living expenses would likely decrease by moving to Silverton but her taxes and

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gas costs would likely increase. She would have a roommate with whom she would share living and transportation expenses, but Oregon's state income tax and a longer work commute would probably reduce any savings Ms. Pfeiffer would have realized by sharing living expenses. The gas costs Mr. Cueva incurs picking up and dropping off Tatiana might increase somewhat: he would be driving farther to transport Tatiana, but he would do so less often. This evidence, then, supports the court's finding that relocation would not significantly change the parents' finances.

Holding

In summary, the court addressed the appropriate factors required by the relocation statute. The challenged findings satisfy *Horner* and those findings in turn support the court's decision to allow relocation. 151 Wn.2d at 896. We, therefore, affirm the court's decision and the amended parenting plan and child support order.

Attorney Fees

Mr. Cueva requests appellate fees and costs pursuant to RAP 14.1, 14.2, and 14.3. He, however, did not show that the court erred by granting Ms. Pfeiffer's petition for relocation and, therefore, is not the prevailing party on appeal. RAP 14.2; RAP 14.3. We, accordingly, deny his request for fees and costs.

Affirmed.

A majority of the panel has determined that this opinion will not be printed in the

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Washington Appellate Reports but it will be filed for public record pursuant to
RCW 2.06.040.

WE CONCUR:

Sweeney, J.

Brown, J.

Korsmo, J.